

**REMARKS**

Claims 1-44 were pending in the subject application. Applicant has hereinabove canceled claims 2, 4-8, 14, 16-20, 26, 27, 31 and 36 and amended claims 1, 9-13, 15, 21-25, 28-30, 33-35 and 37-44. Accordingly, upon entry of this Amendment claims 1, 3, 9-13, 15, 21-25, 28-30, 32-35 and 37-44 will be pending and under examination.

Applicant maintains that these amendments to the claims do not raise any issue of new matter, and that these claims are supported by the specification as originally filed.

**Rejection Under 35 U.S.C. §102(b)**

In the April 24, 2006 Final Office Action, the Examiner rejected claims 1-24 under 35 U.S.C. §102(b) as allegedly anticipated by Noffsinger (U.S. Patent No. 4,647,039) for reasons described in the March 1, 2005 Office Action issued in connection with the above-identified application. In the March 1, 2005 Office Action, the Examiner alleged that Noffsinger discloses a support structure (44) a user engageable member (20), securing means (24) for coupling the user engageable member to the support structure, a measuring means for measuring and displaying force exerted by the user on the user engageable member a support structure designed to resist range of motion of muscular force and a support structure including a base member. Also in the March 1, 2005 Office Action, the Examiner alleged that Noffsinger discloses that the user engagement member

has a first end, intermediate end, and second end, with the first end and the second end rigidly supported by the support structure, and reasonably suggests that the bar may be detached. Further in the March 1, 2005 Office Action, the Examiner alleged that Noffsinger teaches securing means for coupling the user engageable member to the support structure in a manner to permit the first end and second end of the user engageable member to be secured to the support position, and reasonably conveys that the bar may be detached. Even further in the March 1, 2005 Office Action the Examiner alleged that Noffsinger discloses measuring means in communication with means for displaying the maximum force exerted by the user, the measuring means including means for storing and retrieving data including maximum force.

In response to the Examiner's rejection, applicant respectfully traverses on the ground that the cited reference does not recite all the elements of the pending claims.

Briefly, the pending claims recite an isometric exercising apparatus comprising a support structure having no source of motive energy; a user engageable member including a first end, an intermediate section and a second end; a means for removably connecting said first end and second end to said support structure at a user desired position wherein said means allows a user to connect and disconnect the first end and second end at the user desired position, further wherein the connected user engageable member is immovable by a muscular force applied by the user; wherein

the user desired position is a position that allows the user to apply the strongest range of muscular force for a muscle group to the user engageable member; a means for distributing the strongest range of muscular force applied by the user to the user engageable member to the support structure; a means for measuring the strongest range of muscular force applied by the user on said user engageable member; and a means for displaying the strongest range of muscular force applied by the user on said user engageable member.

Noffsinger discloses an apparatus that contains sources of motive energy such as motors and other power devices and means for transmitting force between this source of motive energy and the impingement member such as drive assemblies. The apparatus claimed in the subject application does not include, nor encompass, a support structure containing a source of motive energy, let alone any means for transmitting force between this source and the impingement member.

Furthermore, the apparatus disclosed by Noffsinger could not contain a user engageable member with the same range of motion as the user engageable member of the subject application without a much larger support structure than the one disclosed by the subject application. Noffsinger discloses a device with a frame mounted on top of a platform device, a user engageable bar, a source of motive energy, and mechanical drive means including separate linkage assemblies attached to separate ends of the bar. Noffsinger discloses only an embodiment with crank arms as

the means of mechanical drive. The range of the positions for the user engageable member is determined by the size of these crank arms underneath the apparatus. In order for Noffsinger's apparatus to have the same range of motion for the user engageable member it would have to contain very large crank arms. Such large arms would make the apparatus very heavy, costly, and much larger than the apparatus encompassed by the pending claims.

Accordingly, for the reasons set out above, Noffsinger does not disclose all the elements of the pending claims.

In view of the applicant's amendments to the claims, applicant respectfully requests the Examiner to remove this ground of rejection.

**Rejection Under 35 U.S.C. §103(a)**

In the April 24, 2006 Office Action, the Examiner rejected claims 25-44 under 35 U.S.C. §103(a) as allegedly obvious in light of Noffsinger (U.S. Patent No. 4,647,039) for reasons described in the March 1, 2005 Office Action issued in connection with the above-identified application. In the March 1, 2005 Office Action, the Examiner alleged that Noffsinger reasonably conveys an exercise method involving exerting a force in the position of strongest range of motion (benching), recording the value of the force, inherently abstaining for a period of time as is well known to those skilled in the art, exerting a second force and recording its value, and exercising a second abstention

period. Also in the March 1, 2005 Office Action, the Examiner alleged that the specific limitations drawn to having the first or second force exerted being the maximum force are considered obvious to one of ordinary skill in the art, as the skilled artisan could choose from a variety of well known exercise principles such as 'pyramiding up' wherein subsequent exertions are greater, or 'pyramiding down' wherein subsequent exertions are lessened. Further in the March 1, 2005 Office Action, the Examiner alleged that specific time of exercise is variable and one of ordinary skill in the art would choose a desired period of exertion based on the level of exercise desired. Even further in the March 1, 2005 Office Action, the Examiner alleged that in exercise routines, exerting a force until complete muscle fatigue is a well-known principle in the art ('working 'til failure'). Also in the March 1, 2005 Office Action, the Examiner alleged that the step of exercising and stopping at the onset of pain would have been obvious to one of ordinary skill in the art as the skilled artisan would not want to risk injury during exercise exertion.

In response to the Examiner's rejection, applicant respectfully traverses on the ground that a prima facie case of obviousness has not been established.

Under MPEP §2143, to establish a prima facie case of obviousness the cited reference must teach or suggest every element of the claims.

Noffsinger does not teach or suggest a method for exercising in which a user commences separate exercise

iterations that are each followed by abstaining periods for a period of time not less than several days. The examples provided by the Examiner of the well known exercise principles of "pyramiding up" and "pyramiding down" are examples of exercise routines that occur in the same exercise iteration and are not encompassed by the pending claims. The increased and decreased exertions of these routines are separated by minutes, not days. Whereas, the method disclosed in claim 25 discloses exertions separated by abstentions measured in days and not minutes.

Furthermore, the periods of abstention between each subsequent exercise iteration encompassed by the pending claims is not variable, nor subjective to the desires of the user. The length of each period of abstention is predetermined by an objective result, i.e., the greatest force exerted by the user in the last exercise iteration. In the claimed method, a user cannot subjectively change the level of exercise or the specific period of abstention between exercise iterations.

Even further, the claimed method discloses a method of applying one, and only one, exertion of force in each separate exercise iteration until muscle fatigue occurs in this one, single exertion. It does not disclose the well known principle of "working 'til failure" since it does not disclose a complete muscle fatigue in and of itself, it discloses a complete muscle fatigue *for that single exertion*.

Therefore, Noffsinger does not teach or suggest all the elements of the pending claims. In view of the applicant's amendments to the claims, applicant respectfully requests the Examiner to remove this ground of rejection.

Reconsideration and further examination is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account No. 12-0115.

In the event that an extension of time is required to file this response, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 12-0115.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Daniel N. Smith, Applicant's Attorney at (617) 720-0091 so that such issues may be resolved as expeditiously as possible.


Appl. No. 10/624,788

Reply to Final Office action of April 24, 2006

Page 18 of 18

For these reasons, and in view of the above amendments,  
this application is now considered to be in condition for  
allowance and such action is earnestly solicited.

Respectfully Submitted,

9/25/06   
Date Daniel N. Smith  
Attorney for the Applicant  
Reg. No. 56,445

Daniel N. Smith  
Lambert & Associates  
92 State Street  
Boston, MA 02109  
617-720-0091